

ST 97-16

Tax Type: SALES TAX

Issue: Organizational Exemption From Use Tax (Charitable)

STATE OF ILLINOIS  
DEPARTMENT OF REVENUE  
OFFICE OF ADMINISTRATIVE HEARINGS  
CHICAGO, ILLINOIS

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APPLICANT	)	DOCKET:
	)	(Circuit Court of Cook
	)	County Docket No.)
	)	
v.	)	Sales Tax Exemption
	)	Denial
	)	
THE DEPARTMENT OF REVENUE,	)	Alan I. Marcus,
STATE OF ILLINOIS	)	Administrative Law Judge
	)	

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RECOMMENDATION FOR DISPOSITION PURSUANT TO REMAND ORDER

SYNOPSIS:

This matter comes to be considered pursuant to the Order of Judge Alexander P. White in that Administrative Review matter docketed in the Circuit Court of Cook County as. Judge White's Order, entered March 31, 1997, directed in relevant part as follows:

1. The decision of the Department of Revenue [issued by the Director of Revenue via a Notice of Decision dated December 20, 1991] is reversed and remanded because it is based on the erroneous conclusion that the Foundation is not entitled to an exemption because its activities are on behalf of one out-of-state private school, UNIVERSITY.

2. This matter is remanded to the Department for further proceedings for the purpose of making a decision including the making of findings of fact with reasons therefor beyond a mere "Statement of Facts" and including facts distinct from the facts found in The TAXPAYER v.

The Department of Revenue, 214 Ill. App.3d 468  
(1st Dist. 1991). No further hearings before the  
Department are necessary.

The underlying controversy arose when The TAXPAYER Foundation (hereinafter the "Foundation" or "TAXPAYER") filed a request with the Illinois Department of Revenue (hereinafter the "Department") on August 9, 1989. Said request sought to allow the Foundation to purchase tangible personal property free from the imposition of Use and related taxes as set forth in 35 **ILCS** 105/1 *et seq.*<sup>1</sup>

The Department denied the Foundation's request via correspondence dated August 18, 1989, whereupon applicant filed a timely request for hearing. On April 23, 1991, Administrative Law Judge Alan Osheff conducted a hearing on applicant's request. After considering all evidence before him, ALJ Osheff issued his recommendation denying exemption on December 17, 1991. The Director

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1. When the Foundation filed its request for exemption, it sought relief under the provisions of the Retailers Occupation Tax Act, (hereinafter "ROTA"). At the time of filing, those provisions were found in Ill. Rev. Stat. ch. 120, sec. 440 *et seq.* They are currently located in 35 **ILCS** 120/1 *et seq.*

While the exemption provisions contained in both versions are (for present purposes) virtually identical in substance, they apply only to sales made at retail. This applicant is a fund raising organization, not a retailer. Therefore, its request is, in legal reality, one for exemption from Use and related taxes.

The Use Tax Act (formerly Ill. Rev. Stat. ch. 120. par. 439.1) *et seq.*, is currently found at 35 **ILCS** 105/1 *et seq.* The relevant exemption provisions are currently located at 35 **ILCS** 105/3-5(4). These provisions are, for purposes of the present analysis, also substantially identical in substance to their predecessors, Ill. Rev. Stat. ch. 120, par. 439.3-5. Therefore, in the interest of legal consistency and avoiding unnecessary confusion, I shall hereafter analyze applicant's request as arising under the Use Tax Act and employ the current citations when referring to the exemption provisions contained therein.

adopted this recommendation via Notice of Decision dated December 20, 1991.

Applicant subsequently filed an appropriate petition for Administrative Review. After hearing argument from both counsel, Judge White entered the aforementioned remand order.

At issue in this remand proceeding is whether the Foundation qualifies for exemption from Use and related taxes as "a corporation, society, association, foundation or institution organized and operated exclusively for charitable ... [or] educational purposes" within the meaning of 35 ILCS 105/3-5(4). Following a careful study of the remand order and a thorough review of all documents contained in the record before Judge White on Administrative Review,<sup>2</sup> it is recommended that the Department's tentative denial of exemption be affirmed and finalized as issued.

**FINDINGS OF FACT:**<sup>3</sup>

A. The *Prima Facie* Case and Other Preliminary Considerations

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<sup>2</sup>. Said record consists of the following documents: The transcript of proceedings before ALJ Osheff (Record pp. 000 001 through 000 028); Department Ex. No. 1 (Record pp. 000 029-30); Dept. Ex. No. 2 (Record p. 000 031); Department Ex. No. 3 (Record p. 000 032); TAXPAYER Ex. No. 1 (Record p, 000 033); TAXPAYER Ex. No. 2 (Record p. 000 034); TAXPAYER Ex. No. 3 (Record p. 000 035); TAXPAYER Ex. No. 4 (Record p. 000 036); TAXPAYER Ex. No. 5 (Record pp. 000 037 - 000 073); Department Group Ex. No. 1 (Record pp. 000 074 - 000 144); The Notice of Decision under the Director's signature (Record p. 000 145) and ALJ Osheff's Recommended Decision (Record pp. 000 146 - 000 152).

<sup>3</sup>. In order to facilitate better organization and promote greater clarity, I have divided the Findings of Fact into the following categories: The *Prima Facie* Case and Other Preliminary Considerations (Findings of Fact 1 through 3); Applicant's Organizational Structure (Findings of Fact 4 through 12); Applicant's Financial Structure (Findings of Fact 13 through 16); and Applicant's Operations (Findings of Fact 17 and 18).

1. The Department's *prima facie* case, inclusive of all jurisdictional elements, is established by the admission into evidence of the Department's Tentative Denial of Exemption, (Dept. Ex. No. 2), wherein the Foundation's request for exempt status was denied.

2. Applicant is the successor organization to the UNIVERSITY Scholarship Trust of Illinois. Its sole purpose is to raise scholarship funds for Chicago-area students attending UNIVERSITY (hereinafter "UNIVERSITY" or the "University"). Tr. pp. 8, 10.

3. The University is a private school located in Connecticut. Tr. p. 14; TAXPAYER Ex. No. 4.

#### B. Applicant's Organizational Structure

4. Applicant was initially incorporated under the General Not For Profit Corporation Act of Illinois on December 9, 1982. Its original name was the TAXPAYER Scholarship Fund. Dept. Group Ex. No. 1 (Record p. 000 076).<sup>4</sup>

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<sup>4</sup>. Department's Group Ex. No. 1 (as marked and received into evidence) contains the following documents: A two-page letter from applicant's attorney, Donald L. Metzger, dated August 9, 1989 (Record, pp. 000 074 - 000 075); Applicant's original Articles of Incorporation, dated December 9, 1982 (Record, pp. 000 076 - 000 080); Articles of Amendment to the Articles of Incorporation, dated December 12, 1983 (Record, pp. 000 081 - 000 083); applicant's by-laws (Record, pp. 000 084 - 000 117); a two-page letter, dated May 1, 1985, from the Internal Revenue Service (Record, pp. 000 118 - 000 119); five separate one-page letters indicative of applicant's fund-raising efforts (Record, pp. 000 120 - 000 124); a pamphlet from UNIVERSITY entitled "Financing Your UNIVERSITY Education" (Record, pp. 000 125 - 000 136) and numerous financial statements evidencing applicant's financial structure for various periods (Record, pp. 000 137 - 000 144).

These documents are not individually identified in the original record. Therefore, in the interest of greater clarity, I will cite to the group exhibit as well as to the specific page or pages of the record that contain the cited material.

5. The Foundation's original Articles of Incorporation provide that applicant's organizational purposes are exclusively charitable and educational within the meaning of Section 501(c)(3) of the Internal Revenue Code of 1954. Said Articles also provide *inter alia* that:

A. The Foundation's purposes shall include making distributions that enable Illinois residents to pursue their studies at UNIVERSITY;

B. No part of the corporation's net earnings shall inure to the benefit of, or be distributable to, its members, trustees, officers or other private persons except that the corporation shall be authorized to pay reasonable compensation for services rendered and distributions in furtherance of the Foundation's stated purposes;

C. In the event of dissolution, the Board of Trustees shall first pay or make provisions for the payment of all corporate liabilities and then distribute any remaining assets to organizations that qualify as exempt under Section 501(c)(3) of the Internal Revenue Code.

*Id*; (Record, pp. 000 079 - 080).

6. Applicant filed Articles of Amendment to its Articles of Incorporation on December 12, 1983. The sole purpose of said amendment was to change applicant's name to the TAXPAYER Foundation. Dept. Group Ex. No. 1 (Record pp. 000 081 - 000 083).

7. Applicant's by-laws recite that the Foundation is dedicated to the promotion of the welfare of UNIVERSITY as well as the preservation of its traditions of excellence in education and service and the advancement of its influence and stature in the

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metropolitan area of Chicago, Illinois. *Id.* (Record pp. 000 086 - 000 087).

8. The by-laws further indicate, *inter alia*, that the Foundation is devoted to the following specific purposes:

A. Raising and administering funds which provide financial assistance for the benefit of students attending UNIVERSITY;

B. Encouraging enrollment of qualified students in the University and assisting UNIVERSITY in the selection thereof;

C. Providing a medium through which alumni and friends of UNIVERSITY in the metropolitan Chicago area may contribute to the welfare of the University through financial and other means of generating support for and maintaining interest in the University's programs and activities;

D. Raising of funds that benefit the University or promote the various endowment funds thereof.

*Id.*

9. In pursuit of the above objectives and purposes, the Foundation is required, under terms of its by-laws, to establish and maintain standards for selecting financial aid recipients. Those standards must, however, be consistent with the University's financial aid policies. *Id.*

10. Responsibility for conduct of the applicant's daily business affairs is, under terms of its by-laws, vested in eleven-member Board of Trustees. All members of this body (hereinafter collectively referred to as the "Board") serve without compensation but are entitled to reimbursement for any reasonable expenses which they incur in furtherance of the Foundation's business. *Id.* (Record, pp. 000 095, 000 098).

11. Applicant's by-laws also contain the following:

A. Prohibitions on political activity and restrictions on use of income that are similar in substance to those which appear in its Articles of Incorporation. *Id*; (Record pp. 000 088, 000 111).

B. Sections creating a single class of membership within the Foundation and providing that this class consists of "[a]ny person who shall pay dues as established by the Board of Trustees ...[.]" *Id*. (Record pp. 000 091);

C. Provisions governing resignation from the Foundation. These provisions allow a member to submit a written resignation at any time. They do not, however, "relieve the member so resigning of the obligation to pay any charges theretofore accrued and unpaid." *Id*;

D. A subsection which provides that "[t]he membership of any member delinquent for more than ninety (90) days in the payment of any charges, including the annual membership dues, may thereupon be terminated by a majority vote of those present at any regularly constituted meeting of the Board without notice of hearing or further action by the Board." *Id*; (Record pp. 000 092);

E. Provisions which mandate that all rights and interest of a member in the Foundation shall cease upon termination of membership. These provisions also state that membership dues are non-refundable as are any other charges paid to the Foundation by a member. *Id*.

F. A section that allows applicant's Board of Trustees to levy assessments against members. These monies, which must be paid within thirty days after levy, may be used to fund the Foundation's operating expenses as well as any capital expenditures it may incur. *Id*. (Record, pp.. 000 093).

12. On May 1, 1985, the Internal Revenue Service granted applicant an exemption from federal income taxation. This exemption was granted pursuant to Section 501(c)(3) of the Internal Revenue Code and based on the Service's conclusion that the Foundation

qualified as an organization described in Sections 509(a)(1) and 170(b)(1)(A)(vi) of that statute. Dept. Group. Ex. No. 1 (Record, pp. 000 118 - 000 019).

C. Applicant's Financial Structure

13. The Foundation has no capital stock or shareholders. Tr. p. 8. Its fiscal year runs from July 1 through June 30. Dept. Group. Ex. No. 1 (Record p. 000 116).

14. Financial statements disclose that most of the Foundation's revenues come from contributions it solicits via target mailings that are sent to UNIVERSITY alumni, friends of the University and parents of UNIVERSITY students. It also receives matching donations from unspecified corporations and donations in memory of deceased affiliates of the Foundation. Tr. p. 11; Dept. Group Ex No. 1 (Record pp. 000 137, 000 141, 000 144).

15. Most of the Foundation's expenditures are devoted to scholarship grants. Its remaining expenses cover printing and postage costs as well as administrative expenditures and bank charges. *Id.*

16. Specific income and expenses for the 1987 and 1988 fiscal years were apportioned as follows:

A. 1987

Revenues:

Contributions	\$40,497.36	(82.7% of total)
Interest	<u>\$ 8,455.43</u>	(17.3% " " )
	\$48,952.79	

Expenses:

Scholarship Grants	\$18,500.00	(85% of total)
Administration	\$ 5.00	(less than 1% of total)
Printing and Postage	\$ 3,226.20	(14.8% of total)
Bank Services	<u>\$ 30.00</u>	(less than 1% of total)
	\$21,761.20	



B. 1988

Revenues:

Contributions	\$19,146.00	(69.8% of total)
Interest		
U.S. Government	\$ 6,250.00	(22.8% "       ")
Money Market	<u>\$ 2,030.25</u>	( 7.4% "       ")
	<u>\$27,426.25</u>	

Expenses:

Scholarship Grants	\$30,000.00	(90% of total)
Administration	\$ 369.28	( 1.1% of total)
Printing and Postage	\$ 2,800.41	( 8.4% of total)
Bank Services	<u>\$ 11.80</u>	(less than 1% of total)
	<u>\$33,181.49</u>	

Dept. Group Ex. No. 1 (Record p. 000 137).

D. Applicant's Operations

17. The Foundation's activities center around raising scholarship funds for Chicago-area students attending UNIVERSITY. It raises these funds through mailings which are targeted at UNIVERSITY alumni, friends of the University and parents of UNIVERSITY students. Tr. pp. 10 - 11.

18. Applicant does not disburse the funds it raises directly to students. Rather, it invests the money and then allows the Board to determine what amounts will be given to UNIVERSITY for scholarship purposes. The University's financial aid office then disburses the money based on its independent determination of a student's need. Tr. pp. 11 - 13; TAXPAYER Ex. No. 2.

CONCLUSIONS OF LAW:

On examination of the record established this taxpayer has not demonstrated, by the presentation of testimony or through exhibits or argument, evidence sufficient to overcome the Department's *prima*

*facie* case. Accordingly, under the reasoning given below, the determination by the Department that the Foundation does not qualify for exemption from Use and related taxes as a "corporation, society, association, foundation or institution organized and operated exclusively for charitable ... [or] educational purposes" within the meaning of 35 **ILCS** 105/3-5(4) should be affirmed. In support thereof, I make the following conclusions:

A. Statutory Provisions, the Burden of Proof and Other Preliminary Considerations

Taxpayer herein claims the right to an exemption from Use and related sales taxes pursuant to 35 **ILCS** 105/3-5(4), which provides in relevant part that:

Exemptions. Use of the following tangible personal property is exempt from the tax imposed by this Act:

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(4) Personal property purchased by a government body, by a corporation, society, association, foundation, or institution organized and operated exclusively for charitable, religious or educational purposes ...[.]

It is well established in Illinois that a statute exempting property or an entity from taxation must be strictly construed against exemption, with all facts construed and debatable questions resolved in favor of taxation. People Ex Rel. Nordland v. Home for the Aged, 40 Ill.2d 91 (1968); Gas Research Institute v. Department of Revenue, 154 Ill. App.3d 430 (1st Dist. 1987). Based on these rules of construction, Illinois courts have placed the burden of proof on the party seeking exemption and have required such party to prove by clear and convincing evidence that it falls within the

appropriate statutory exemption. Metropolitan Sanitary District of Greater Chicago v. Rosewell, 133 Ill. App.3d 153 (1st Dist. 1985).

For many years, our courts have also adhered to the fundamental principle that the word "exclusively," when used in Section 105/3-5(4) and other tax exemption statutes, means "the primary purpose for which property is used and not any secondary or incidental purpose."<sup>5</sup> Methodist Old People's Home v. Korzen, 39 Ill.2d 149, 157 (1968). (hereinafter "Korzen"). See also, Gas Research Institute v. Department of Revenue, 145 Ill. App.3d 430 (1st Dist. 1987); Pontiac Lodge No. 294, A.F. and A.M. v. Department of Revenue, 243 Ill. App.3d 186 (4th Dist. 1993).

B. The Relevant Criteria For Charitable Exemption

Illinois courts have not addressed the precise issue raised by this taxpayer, which is whether a not-for-profit corporation whose sole activity consists of raising scholarship funds for distribution at a private school not located within this State constitutes a "corporation, society, association, foundation, or institution organized and operated exclusively for charitable... [or] educational purposes ..." within the meaning of 35 **ILCS** 105/3-5(4). Nevertheless, in TAXPAYER v. Department of Revenue, 214 Ill. App.3d 468 (1st Dist. 1991) (hereinafter "YCC I"), the court analyzed appellant's claims for educational and charitable exemptions under

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<sup>5</sup>. The present case focuses on applicant's operations, not its use of real estate. Thus, it seems appropriate to replace those portions of the above definition which refer to use with language that reflects the Foundation's primary function as reflected in its organizational documents and actual operations. Any references to secondary or incidental use should likewise be changed to secondary or incidental function.

the Retailer's Occupation Tax Act according to the body of case law developed for analysis of property tax exemptions.

Applicant in YCC I was a not for profit corporation that engaged in various activities on behalf of the University, its students and alumni. Its operations included providing assistance in the recruitment of Chicago-area students, raising scholarship funds and sponsoring programs in the Chicago area designed to foster continuing alumni support for UNIVERSITY. The court analyzed these facts, which pertained to appellant's request for charitable exemption, under the guidelines established in Korzen, *supra*.

In Korzen, the Illinois Supreme Court adopted the following definition of "charity" in analyzing whether appellant's senior citizens home was exempt from real estate taxes under the Revenue Act of 1939:

... a charity is a gift to be applied consistently with existing laws, for the benefit of an indefinite number of persons, persuading them to an educational or religious conviction, for their general welfare - or in some way reducing the burdens of government.

39 Ill.2d at 157 (citing Crerar v. Williams, 145 Ill. 625 (1893)).

The Korzen court also observed that the following "distinctive characteristics" are common to all charitable organizations:

- 1) they have no capital stock or shareholders;
- 2) they earn no profits or dividends, but rather, derive their funds mainly from public and private charity and hold such funds in trust for the objects and purposes expressed in their charters;

- 3) they dispense charity to all who need and apply for it;
- 4) they do not provide gain or profit in a private sense to any person connected with it; and,
- 5) they do not appear to place obstacles of any character in the way of those who need and would avail themselves of the charitable benefits it dispenses.

*Id.*

The YCC I court began its analysis of the above criteria by noting that membership in appellant's organization was limited to UNIVERSITY alumni or parents of the alumni and current students. It also observed that appellant's members paid dues and were charged admission fees to YCC-sponsored events (lectures, concerts, etc.) that were not open to the general public.

The court found that these facts, coupled with those set forth above, established that the YCC was designed for the exclusive benefit of UNIVERSITY. Thus, the court concluded that appellant did "not appear to dispense its benefits to an indefinite number of people or all those who need and apply for it" as required by Korzen. YCC I at 478.

In making this conclusion, the court argued that "[t]he State of Illinois and its taxpayers receive no apparent relief from any economic burden [imposed] by the YCC's activities." *Id.* Accordingly, it dismissed appellant's claims to the contrary as "hyperbolic" because they rested on assertions of charity that failed to recognize that YCC's benefits were "reserved exclusively to UNIVERSITY alumni and students" rather than the general public. *Id.*

C. The Foundation's Entitlement to a Charitable Exemption

The instant case is different from YCC I in that the Foundation does not engage in any of the social, cultural or recruitment-related activities of the appellant therein. Rather, this applicant's sole function is to raise funds that are directly disbursed to the University, which in turn dispenses the money to Chicago-area students according to its independent determination of financial need.

This arrangement makes it factually impossible for the Foundation to dispense charity directly to the students it purports to benefit. Moreover, the pamphlet entitled "Financing Your UNIVERSITY Education 1989 - 1990" (included in Dept. Group Ex. No. 1) neither mentions the Foundation by name nor contains any specific reference to its activities.

Absent such references, I am unable to discern whether persons in need of Foundation scholarships actually know about the availability of such funds at the time they apply for financial aid. Indeed, the letter submitted as TAXPAYER Ex. No. 4 suggests that needy students do not become aware they are receiving (or, if necessary, could receive future) Foundation grants until the University disburses the awards pursuant to its internal financial aid policies. Therefore, it seems factually impossible for applicant to "dispense charity to all who need and apply for it" as required by Korzen. See, Highland Park Hospital v. Department of Revenue, 155 Ill. App.3d 272 (2d Dist. 1987).

The above analysis establishes that the Foundation's activities do not center around dispensation of charity. Instead, business reality suggests that its operations are exclusively those of a fund-

raising organization whose solicitations and collections primarily benefit UNIVERSITY itself by enabling the University to dispense scholarships according to its own internal financial aid policies. Therefore, it stands to reason that Chicago-area students are but incidental beneficiaries of the Foundation's activities.

Incidental acts of charity by an organization will not be enough to establish that organization as charitable within the meaning of applicable exemption statutes. Morton Temple Association v. Department of Revenue, 158 Ill. App.3d 794, 796 (3rd Dist. 1987) (hereinafter, "MTA"). Furthermore, "[t]he fact that income is ultimately put to a charitable or donative purpose does not entitle the [applicant to a charitable purpose] exemption." Albion Ruritan Club v. Department of Revenue, 209 Ill. App.3d 915 (5th Dist. 1991). These principles, coupled with the cost/benefit analysis alluded to in YCC I, cause me to be unable to recommend that this applicant be relieved of its otherwise valid obligation to pay Use and related taxes into the State treasury.

Applicant's organizational documents provide additional evidence of its non-exempt status. These documents do recite that the Foundation is organized for charitable and other exempt purposes. However, these recitations, together with those that govern applicant's dissolution and prohibit pecuniary profit, "do not relieve [applicant] of the burden of proving that ... [it] actually and factually [engages in charitable activity]." MTA at 796. Therefore, "it is necessary to analyze the activities of the [applicant] in order to determine whether it is a charitable organization as it purports to be in its charter." *Id.*

Membership in the Foundation is, under terms of its by-laws, limited to dues-paying members. Such a restriction effectively prevents members of the general public who cannot afford to pay from becoming members of the Foundation. Consequently, the reasoning contained in Rogers Park Post No. 108 v. Brenza, 8 Ill. 2d 286 (1956), (hereinafter "Rogers Park") and cases decided thereafter<sup>6</sup> defeats the Foundation's application for charitable exemption.

In Rogers Park, the Illinois Supreme Court established the now well-settled principle that denies exempt status to organizations that operate primarily for the benefit of their own members. The court found such organizations more akin to private clubs than charitable institutions in that the dominant purpose of their operations is to benefit their own members rather than the general public. Rogers Park at 291-292. Thus, they neither "benefit of an indefinite number of persons" nor "dispense charity to all who need and apply for it" as required by Crerar and Korzen.

Applicant's by-laws also require that all Foundation members pay dues. While charging dues does not, *ipso facto*, warrant denial of applicant's request for exempt status, the absence of provisions authorizing the Board to waive dues or otherwise confer membership on "persons who need and seek the benefits offered but are unable to pay ..." is distinctly non-charitable. Small v. Pangle, 60 Ill. 2d 510, 518 (1975); Du Page County Board of Review v. Joint Commission on

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<sup>6</sup>. See also, MTA, supra; DuPage Art League v. Department of Revenue, 177 Ill. App.3d 895 (2d Dist. 1988); Pontiac Lodge No. 294, AF and AM v. Department of Revenue, 243 Ill. App.3d 186 (4th Dist. 1993).



Accreditation of Healthcare Organizations, 274 Ill. App.3d 461, 471 (2nd Dist. 1995).

A similar rationale applies to the provisions of applicant's by-laws which authorize its Board to levy assessments. Such levies, coupled with the provisions empowering the Board to terminate membership for non-payment of same, may serve legitimate business purposes. Nevertheless, they, and the provisions allowing the Board to terminate membership for delinquent dues, lack the "warmth and spontaneity indicative of charitable impulse." Korzen, *supra* at 158.

The Foundation's exemption from federal income tax does not alter the above analysis. This exemption, standing alone or taken in conjunction with the statements in applicant's organizational documents, does not establish that applicant actually operates for exclusively charitable purposes. *Cf.* People ex rel County Collector v. Hopedale Medical Foundation, 46 Ill.2d 450 (1970), (hereinafter "HMF"). Moreover, while this exemption establishes that the Foundation is a "charity" for purposes of Sections 501(a) and 501(c)(3) of the Internal Revenue Code, those Sections do not preempt Section 105/3-5(4) or the other statutory provisions governing Illinois Use Tax exemptions. For this and all the aforementioned reasons, I conclude that the Foundation's operations do not qualify as charitable within the meaning of Illinois law.

D. The Educational Exemption and Related Considerations

In People ex rel. McCullough v. Deutsche Evangelisch Lutherisch Jehova Gemeinde Ungeanderter Augsburgischer Confession, 249 Ill. 132 (1911), (hereinafter "McCullough"), the Illinois Supreme Court offered the following definition of "school" when considering whether

appellant's property was exempt from property taxes under the then applicable Constitutional mandate and relevant statutory provisions, which the court held did not exempt the property by retroactive application:

A school, within the meaning of the Constitutional provision, is a place where systematic instruction in useful branches is given by methods common to schools and institutions of learning, which would make the place a school in the common acceptation [sic] of the word.

McCullough at 137. See also, People ex rel Brenza v. Turnverein Lincoln, 8 Ill.2d 198 (1956); Coyne Electrical School v. Paschen, 12 Ill.2d 387 (1957).

Current Illinois case law holds that a private school cannot obtain an exemption from real estate taxes unless it establishes two propositions by clear and convincing evidence: first, that it offers a course of study which fits into the general scheme of education established by the State; and second, that it substantially lessens the tax burdens by providing educational training that would otherwise have to be furnished by the State. Illinois College of Optometry v. Lorenz, 21 Ill.2d 219 (1961).

This applicant fails to qualify under the above criteria because it does not offer any course of study. Rather, it raises money for a private school that is not located in the State of Illinois and therefore, conducts no educational activities therein. Accordingly, its exemption argument seems more properly considered under the line of cases that support exemption of properties used for purposes found to be "reasonably necessary" to carry on the work of schools,

charities and other tax-exempt entities. MacMurray College v. Wright, 38 Ill. 2d 272 (1967) (hereinafter "Wright").<sup>7</sup>

Appellants in Wright were two colleges that sought exemption for certain faculty and staff housing facilities that were adjacent to their tax-exempt main campuses. The court held that although "[e]xemption will be sustained where it is established that the property is used primarily for purposes which are reasonably necessary for the accomplishment and fulfillment of the [exempt] educational objectives, or efficient administration of, the particular institution [sic]," applicants had failed to sustain their respective burdens of proof. *Id.* at 278. Specifically, the court found the record lacking in evidence which established that the faculty or staff were required, "because of their educational duties, to live in these residences or that they were required to or did perform any of their professional duties there." *Id.* at 279. The court also noted that "there was no specific proof presented, aside from one isolated example, "to show that student, academic, faculty administrative or any other type of college-connected activities were ever actually conducted at [the facilities] by any member of the faculty or staff of either of the colleges." *Id.*

This applicant does not qualify for exemption under Wright and its progeny for numerous reasons. First, much (if not all) of its

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<sup>7</sup>. See also, McKenzie v. Johnson, 98 Ill.2d 87 (1983); Evangelical Hospital Association v. Novak, 125 Ill. App.3d 439 (2d Dist. 1984); Northwestern Memorial Foundation v. Johnson, 141 Ill. App.3d 309 (1st Dist. 1986); Knox College v. Department of Revenue, 169 Ill. App.3d 832 (3rd Dist. 1988); Norwegian American Hospital v. Department of Revenue, 210 Ill. App.3d 318 (1st Dist. 1991); Memorial Child Care v. Department of Revenue, 238 Ill. App.3d 985 (4th Dist. 1992).

supporting evidence is based on the testimony of its sole witness, PRESIDENT. In his capacity as president of the Foundation, PRESIDENT was competent to testify as to applicant's organization and operations as well as the contents of its books and records. (Tr. p. 7). Applicant did not, however present any evidence establishing PRESIDENT's first-hand knowledge of, or the extent of his education in or experience and familiarity with, the University's own organization, internal operations (especially its financial aid policies) and fiscal or other business records. Accordingly, I conclude that applicant failed to establish PRESIDENT's competence in these matters.<sup>8</sup>

Due to these failures of proof, I must discount the opinions PRESIDENT offered at Tr. pp. 15-16 and 22-28<sup>9</sup> as conclusory and self-serving. Therefore, such opinions cannot provide a legally sufficient basis for establishing that applicant's activities are reasonably necessary to fulfill UNIVERSITY's operations and the efficient administration thereof. (See, Tr. p. 6).

The documents offered in support of the reasonably necessary argument<sup>10</sup> likewise fall short of the clear and convincing standard

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<sup>8</sup>. Discussion of the legal requirements for establishing the qualifications and competency of experts giving opinion testimony can be found in Taylor v. The Carborundum Co, 107 Ill. App.2d 12 (1st Dist. 1969); People v. Johnson, 145 Ill. App.3d 626 (1st Dist. 1986).

<sup>9</sup>. In substance, these opinions purported to establish the extent of UNIVERSITY's reliance on Foundation grants and any benefits associated therewith.

<sup>10</sup>. Said documents include that portion of Dept. Group Ex. No. 1 entitled "Financing Your UNIVERSITY Education 1989 - 1990" (Record pp. 000 125 - 000 136) as well as the following: TAXPAYER Ex. No. 2 (letter dated April 11, 1991 from UNIVERSITY President Benno C. Schmidt, Jr); TAXPAYER Ex. No. 3 (letter dated March 5, 1991

necessary to sustain applicant's burden of proof. With respect to the University's Financial Report (TAXPAYER Ex. No. 5), I reiterate that applicant failed to qualify PRESIDENT as a competent witness as to the contents of UNIVERSITY's own books and records. As a consequence thereof, the Foundation has also failed to demonstrate exactly how its activities further efficient administration of the University's fiscal affairs.

Even if applicant had satisfied these evidentiary requirements, I do not believe the Foundation could sustain its burden of proof without presenting a witness who could offer competent testimony as to the workings of UNIVERSITY's financial aid policies and their relationship (if any) to the Foundation's activities. For the reasons stated above, I conclude PRESIDENT was not such a witness. Based on this and all the aforementioned evidentiary deficiencies, I conclude that applicant has failed to prove that its operations are reasonably necessary to further those of UNIVERSITY.

It also bears noting that applicant presented no evidence establishing that the University engages in exempt activity within the State of Illinois. UNIVERSITY itself is neither located in the State of Illinois nor supported by Illinois tax dollars. Therefore, applicant has failed to prove how the educational and research activities set forth in its Financial Report (TAXPAYER Ex. No. 5, which for limited purposes of the present discussion, will be assumed

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acknowledging the Foundation's gift of \$30,000.00 to the University); TAXPAYER Ex. No. 4 (Letter from UNIVERSITY advising unspecified student that he or she has been named a TAXPAYER Foundation Scholar for the 1990-91 academic year) and TAXPAYER Ex. No. 5 (Financial Report of UNIVERSITY).

to have been introduced by a competent witness) benefit Illinois taxpayers or the State treasury. Thus, it is logical to infer that the State treasury would be unable to recoup any costs associated with exempting an entity which limits its disbursements to an educational institution that Illinois taxpayers do not support. Cf. TAXPAYER I, *supra*. Given that these costs (in terms of lost revenues) would tend to increase, rather than decrease the State's financial burden, fundamental economic principles dictate that the Foundation carry on its work without the benefit of exempt status. DuPage County Board of Review v. Joint Commission on Accreditation of Healthcare Organizations, 274 Ill. App.3d 461 (2nd Dist. 1995).

UNIVERSITY's exemption from federal income tax does not change the preceding conclusion. This exemption does not prove that the University engages in exempt activity within the State of Illinois. HMF, *supra*. Accordingly, the above analysis provides ample reasons for denying an exemption request wherein applicant has failed to prove that its operations are reasonably necessary to further those of UNIVERSITY and also that its activities (as well as those of the University) confer any benefit on Illinois taxpayers. Furthermore, to the extent that the analysis found on pages 3 to 6 of ALJ Osheff's Recommendation (Record pp. 000 148 - 000 152) provides additional reasons in support of applicant's non-exempt status, I hereby incorporate that analysis into this Recommendation.

WHEREFORE, for the reasons set forth above, it is my recommendation that the Department's Tentative Denial of Exemption be affirmed.

Respectfully Submitted,

\_\_\_\_\_  
Date

\_\_\_\_\_  
Alan I. Marcus,  
Administrative Law Judge

Adopted and Approved by:

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Date

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Kenneth E. Zehnder,  
Director of Revenue